

IN THE UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

COMFORTABLY NUMB MARINE, LLC,

Plaintiff

v.

No. 1:15-cv-00100

MARKEL AMERICAN INSURANCE  
COMPANY,

Defendant

**MARKEL AMERICAN INSURANCE COMPANY'S  
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Markel American Insurance Company ("Markel") respectfully to dismiss the Complaint of Plaintiff Comfortably Numb, LLC ("Plaintiff") pursuant to Fed. R.Civ. P. 12(b)(6). As grounds for its motion, and as set forth more fully in the accompanying memorandum of law, Markel states the following:

1. Plaintiff has failed to allege facts which, if proven, would establish that it was entitled to coverage under an insurance policy issued by Markel and that Markel breached the policy by denying coverage. As a result, both the breach of contract and bad faith claims must be dismissed.

2. Plaintiff's lawsuit is untimely in light of a policy provision requiring Plaintiff to bring a legal action in relation to a claim for physical damage within twelve months of Plaintiff's notice of the loss. As a result, both the breach of contract and bad faith claims must be dismissed.

3. The plaintiff's claim for bad faith is unsupported by factual allegations that give rise to a plausible inference that it might be entitled to relief if the allegations are proven. As a result, both the bad faith claim must be dismissed.

Wherefore, defendant Markel American Insurance Company respectfully requests that Plaintiff's Complaint be dismissed with prejudice, and that the Court award it costs and attorneys fees and such other and further relief as is just and equitable.

Defendant  
Markel American Insurance Company  
By its counsel,

/s/ Kara Thorvaldsen

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**CERTIFICATE OF SERVICE**

I, Kara Thorvaldsen, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the NEF on this date as follows:

Richard S. Humphrey: richardhumphrey@richardhumphreylaw.com  
Steven Clark: sclark@bohannon.com

I am not aware of any parties who are not registered participants.

/s/ Kara Thorvaldsen  
Kara Thorvaldsen